

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LAZARO MARES,

Plaintiff,

v.

No. 15-cv-0413 SMV

**CAROLYN W. COLVIN,
Acting Commissioner of Social Security Administration,**

Defendant.


**ORDER GRANTING PLAINTIFF'S MOTION
FOR ATTORNEY FEES UNDER EAJA**

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support [Doc. 28], filed on October 24, 2016. Plaintiff requests attorney fees in the amount of \$7,042.28. The Commissioner has neither responded, nor filed any notice of an agreed-upon extension. Her lack of response constitutes consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). The Court, having considered the motion, the lack of any response in opposition, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act [Doc. 28] is **GRANTED**, and Plaintiff Lazaro Mares is authorized to receive **\$7,042.28** for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent